



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME, COUNCIL 93, LOCAL 1348
CLAREMONT CITY EMPLOYEES

Complainant

v.

CLAREMONT CITY COUNCIL

Respondent

CASE NO. A-0402:10

DECISION NO. 87-33

APPEARANCES

Representing AFSCME, Council 93, Local 1348, Claremont City Employees:

James C. Anderson, Director
Jim Barry, Esquire

Representing the Claremont City Council:

William A. Vigneault, Director of Public Works
Bert Mason, Esquire

BACKGROUND

The AFSCME, Council 93, Local 1348, Claremont City Employees ("Union") filed an improper practice charge against the Claremont City Council ("City") on October 23, 1986 claiming violations under RSA 273-A:5, I (c), (g), (h) and (i).

Specifically, the Union alleges that it has an agreement with the City through December 31, 1986 and this agreement covers, inter alia, certain positions at the Claremont Waste Water Treatment facility. In February, following rumors brought to the attention of the Union, the City announced it would be terminating wastewater treatment and would contract for these services. (see Union's complaint) The Union alleges that prior to this time the City had private negotiations with union employees and have employed certain persons in positions which are now claimed to be outside the certified bargaining unit. The Union alleges that such "contracting out" was to begin in the later part of October, 1986 and would be unlawful under the certification and the contract in force.

The City responded by admitting a contract agreement with the Union was in force during January, 1986 to December, 1986 time period and that certain

positions at the Claremont Waste Water Treatment facility are included in the bargaining unit. The City denied any "private negotiations" with employees. Further, the City alleges it began contract operations of the Primary Wastewater Plant effective January 30, 1986 and actual operation by Dufresne-Henry began February 10, 1986. The City alleged that the two employees referred to, both resigned effective February 10, 1986 and the City announced that their vacated positions would not be filled. The City denied any breach of the collective bargaining agreement in RSA 273-A.

A hearing was held at PELRB offices in Concord, New Hampshire on March 26, 1987 with all parties represented.

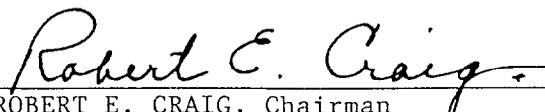
FINDINGS OF FACT AND RULINGS OF LAW:

1. The City argued that the alleged violation occurred in January of 1986 but the Union filed a complaint on October 23, 1986 well beyond the six (6) month requirement under RSA 273-A:6, VII.
2. The Union argued that they did file a complaint earlier but PELRB didn't receive it and that the violation was a "continuing violation" and should be examined as such.
3. Testimony was received establishing that:
 - (a). a contract was in force;
 - (b). employees of the Water Treatment plant were in the bargaining unit;
 - (c). the City did contract with Dufresne-Henry for the operation of the Waste Water Treatment facility;
 - (d). the two operators did resign and go to work for Dufresne-Henry and are still employed at the Waste Water Treatment facility doing the same work.
4. The City in its communication with AFSCME, Council 93 representative by letter dated February 6, 1986 indicated that it will contract for wastewater treatment.
5. The City's notice of February 10, 1986 informs all city employees that two vacancies at City Sewage Treatment Plant will not be filled.
6. The Union argues that the City has illegally modified the bargaining unit.

DECISION

(announced orally at conclusion of hearing on March 26, 1987)

- (a). The complaint was filed with PELRB on October 23, 1986 well beyond the six (6) month requirement of RSA 273-A:6, VII since the alleged violation occurred sometime prior to February 10, 1986.
- (b). The complaint is untimely filed and is hereby dismissed.


ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 11th day of May, 1987.

Chairman Robert E. Craig presiding. Members Richard E. Molan and Richard